

- (1) Whether claimant has established that he suffered an accidental injury arising out of and in the course of his employment; and

(2) Nature and extent of claimant's disability.

As a subpart of both of the above listed issues, respondent contends that claimant suffered several accidents after the accident which is the subject of this claim and asserts that the claimant's disability, if any, is attributable to those subsequent accidents. The Appeals Board also notes that the timeliness of notice was made an issue before the Administrative Law Judge. The Appeals Board adopts the finding by the Administrative Law Judge that the claimant did not give timely notice, but there was no prejudice resulting from the lack of notice. The Appeals Board also adopts the findings by the Administrative Law Judge on all other issues except those expressly listed above.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that claimant sustained a fifteen percent (15%) permanent partial disability as a result of accidental injury arising out of and in the course of his employment with respondent.

Claimant alleged and testified that on June 24, 1991 he was injured when a come-along tool weighing fifteen to twenty-five (15 to 25) pounds was thrown into claimant's upper back and shoulder. The dispute in this case arises from the fact that claimant did not seek medical attention until September 26, 1991 after he had left his employment for respondent and began working for a second employer, W. S. Bunch. Claimant also, thereafter, worked for a period of time driving a truck and testified that the activities of driving the truck aggravated his shoulder injury. Finally, claimant testified to a slip and fall accident on March 3, 1993. The medical records reflect that he fell on his left shoulder. Claimant testified that he fell on his back, but also testified that the fall aggravated his shoulder.

The evidence presented convinces the Appeals Board that claimant suffered permanent partial impairment as a result of his injury of June 24, 1991 while working with respondent. The Appeals Board so finds for several reasons. First, claimant has consistently attributed his problems to the initial injury both in his testimony and in his statements to the doctors as reflected in various medical records. In addition, the injury on September 1991 while working for a separate employer appears to have been primarily an injury to the back. Claimant, as indicated, testified he had pain in his shoulder from the work performed for W. S. Bunch. However, claimant had experienced numbness in his arm the day after the injury at his employment with respondent. At the time of his deposition, claimant testified that he had basically the same symptoms ever since. The first doctor claimant saw for the injury was Dr. Rider in September 1991. Although claimant saw Dr. Rider after the back injury and increase in pain in his shoulder at W.S. Bunch, claimant gave Dr. Rider a history which attributed his symptoms to his injury at respondent. Claimant testified he did not file a workers compensation claim against W.S. Bunch because he believed the injury occurred in June during the course of his employment with respondent.

Two physicians gave ratings of claimant's physical impairment. Dr. Prostic testified that claimant has a fifteen to twenty percent (15-20%) permanent partial impairment. However, Dr. Prostic did not see claimant until after claimant worked for a period of time as a truck driver and after claimant's slip and fall incident in March 1993. Dr. Rider, on the other hand, rated claimant before both the work as a truck driver and the slip and fall

incident in March 1993. He rated claimant's impairment as fifteen percent (15%) permanent partial impairment.

The evidence convinces the Appeals Board that claimant suffered permanent partial impairment as a result of his June 24, 1991 injury. The record does not establish that claimant suffered any more than a temporary exacerbation or aggravation of that injury in the course of his employment with W. S. Bunch. The Appeals Board, therefore, finds that the fifteen percent (15%) rating given by Dr. Rider more accurately assesses the claimant's disability.

The Appeals Board, on the other hand, finds that the temporary total disability claimant suffered on two separate occasions did, in fact, result from temporary aggravations of his shoulder injury and from other injuries claimant may have suffered. The period of temporary total disability from October 3, 1991 through December 3, 1991 was occasioned by the incident which occurred at W. S. Bunch when claimant testified that he heard a pop in his back. Claimant, himself, acknowledged this was the reason he stopped working at W. S. Bunch. Under these circumstances, the Appeals Board finds it inappropriate to assess that period of temporary total disability against this particular respondent.

The period of temporary total disability from March 23, 1993, likewise, appears attributable to either the slip and fall incident and/or additional problems caused by the truck driving. In either event, the temporary total disability for that period should not be assessed against the respondent. The evidence establishes that claimant suffered an injury in June 1991 while working for respondent. He was able to continue to work. He took time off to assist his mother and then return to similar work for W. S. Bunch. The Appeals Board, therefore, finds that assessment of temporary total disability occasioned by subsequent temporary aggravations from other causes should not result in an award of temporary total against this respondent.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated April 26, 1995 should be, and hereby is, modified.

**WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Edward E. Maul, and against the respondent, Delong Industrial Maintenance, Inc., and its insurance carrier, Insurance Company of North America, for an accidental injury which occurred on June 24, 1991, and based on an average weekly wage of \$462.25 for 415 weeks of compensation at the rate of \$46.23 per week in the sum of \$19,185.45 for a 15% permanent partial general body impairment of function.

As of August 22, 1995, there is due and owing claimant 217.14 weeks permanent partial compensation at the rate of \$46.23 per week in the sum of \$10,038.38, which is ordered paid in one lump sum less any amounts previously paid. Claimant is, thereafter, entitled to 197.86 weeks permanent partial general body impairment of function compensation at the rate of \$46.23 per week totaling \$9,147.07 to be paid until fully paid or further order of the Director.

Future medical benefits will be awarded only upon proper application to and approval of the Director. Unauthorized medical expense of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

Fees necessary to defray the expense of administration of the Kansas Workers Compensation Act are hereby assessed to the respondent to be paid direct as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Curtis, Schloetzer, Hedberg, Foster & Associates Transcript of Preliminary Hearing	\$182.70
Appino & Biggs Reporting Service Transcript of Regular Hearing	\$140.00
Hostetler & Associates Deposition of Edward Maul	\$204.65
Deposition of Richard Williams	\$112.90
Deposition of Tom Shriwise, M.D.	\$164.85
Deposition of Edward Prostic, M.D.	\$ 83.05
Gene Dolginoff Associates Deposition of James W. Rider, M.D.	\$177.70
Deposition of Wendell Myers	\$148.52

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1995.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: John R. Kurth, Atchison, Kansas  
Marcia Yates Sandgren, Kansas City, Missouri  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director